

I am also of opinion that the claim of Wells & Miller, under the mechanics lien law, cannot be supported, the evidence brought in since the order of the 15th of December, 1847, not removing the objections which appeared then, and seem to me now fatal to said claim. The exceptions, therefore, of these parties, to the report of the Auditor, will be overruled.

With regard to the question of the amount of materials on hand when the mortgaged premises were taken possession of by Dawson & Norwood on the 19th of June, 1846, I am of opinion that it must be assumed from the evidence that they were worth \$18,000, and that the account of the Auditor, founded upon that assumption, is correct. The deficit upon that assumption, as shown by the Auditor's report of the 3d of December, 1849, is but \$499 12, and looking to the previous operations of the factory, it may, I think, reasonably be supposed that that small sum was lost by the same causes which had swept away so much capital.

The account of the Auditor, founded upon this estimate, cannot now be affirmed, because it assigns portions of the proceeds to Winn & Ross, trustees of Jones, they being, in my opinion, entitled to nothing, inasmuch as no part of the notes of Hancock & Mann, held by them, have been paid.

The case, therefore, will be referred to the Auditor, to state a final account, distributing the entire fund among the parties entitled, according to their rights as hereinbefore decided, it being now fair to infer that all the holders of the paper of Jones, given in exchange for that of Hancock & Mann, have come in.

[An order was passed on the 10th of January, 1850, referring the cause to the Auditor, in accordance with the foregoing opinion. The Auditor afterwards made a report, and stated several accounts to which exceptions were again filed by the parties. Upon the hearing of these exceptions, the following opinion of the Chancellor was delivered on the 21st of May, 1850.]